



Resolution 1941 (2013)¹

Final version

Request for the opening of a monitoring procedure in respect of Hungary

Parliamentary Assembly

1. The Parliamentary Assembly takes note of the report on the request for the opening of a monitoring procedure in respect of Hungary, which was prepared following the motion for a resolution on “Serious setbacks in the fields of the rule of law and human rights in Hungary” (Doc. 12490). It takes note of the opinion of the Bureau of the Assembly which does not support the opening of the monitoring procedure in respect of Hungary. In this regard, the Assembly supports the fact that the ongoing dialogue continues between the European Commission for Democracy through Law (Venice Commission) and the Hungarian Government.
2. The constitution and related organic laws are the basis for the legal and democratic functioning of a country. They provide the basic democratic rules and the framework for the protection of the human rights of its citizens and the respect for the rule of law. In the view of the Assembly, a constitutional framework should therefore be stable and based on a wide social acceptance and large political consensus. As a result of the 2010 elections, one party alliance gained a more than two-thirds majority in the Hungarian Parliament which represents, according to common European standards, sufficient legitimacy for amending the constitution.
3. The Assembly notes that the new Hungarian Parliament, for the first time in the history of free and democratic Hungary, amended the former constitution – inherited from the one-party system – into a new and modern Fundamental Law through a democratic procedure, after intensive debates in the parliament and with contributions from Hungarian civil society.
4. The Assembly supports the opinion of the Venice Commission by taking note that the number of subjects regulated by a two-thirds majority has not increased since the adoption of the new Fundamental Law. In order to implement these laws with the widest possible support of civil society, the Assembly calls on the governing majority and all opposition parties to further co-operate on these topics.
5. A constitutional framework should be based on broadly accepted values in society. The Assembly notes that several provisions are a concern to a part of Hungarian society. These provisions however are based on traditional European values, are noted in the constitutions of many other European countries and were adopted by a democratic two-thirds majority in the Hungarian Parliament. This affects the democratic legitimacy and social acceptability of the constitutional framework, which is a matter for concern.
6. The Assembly is deeply concerned about the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary. This new framework has introduced excessively concentrated powers, increased discretionary powers and reduced both the accountability and legal oversight of numerous government institutions and regulatory bodies in Hungary.
7. In the opinion of the Assembly, the curtailing of the powers and competences of the Constitutional Court – an important counter-balancing and stabilising institution in the Hungarian political system – is further evidence of the erosion of the system of checks and balances in Hungary. In this context, the fact that the

1. *Assembly debate* on 25 June 2013 (22nd Sitting) (see Doc. 13229, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Ms Lundgren). *Text adopted by the Assembly* on 25 June 2013 (22nd Sitting).



ruling coalition has used its two-thirds majority in the parliament to circumvent Constitutional Court decisions and to reintroduce provisions in the constitution that were annulled by the Constitutional Court, has raised concerns.

8. Between May 2010 and the entry into force of the new Fundamental Law, on 1 January 2012, the previous constitution was amended 12 times. Since then, the new Fundamental Law has already been amended four times, the last time considerably. The constant changing of the constitution for narrow party political interests undermines the required stability of the constitutional framework. In addition, the Assembly wishes to underline that the main justification for a qualified two-thirds majority in constitutional matters is to protect the constitutional framework from frivolous changes by a ruling party and to ensure that the constitution is based on as wide a consensus as possible between all political forces on the legal and democratic foundations of the State. The possession of a two-thirds majority does not relieve a ruling party or coalition from the obligation to seek consensus and to respect and accommodate minority views and interests. The attempt of the ruling coalition in Hungary to use its unique two-thirds majority to push through reforms has been in contravention of these democratic principles.

9. The Assembly regrets the recent adoption of the so-called fourth amendment to the constitution against the recommendations of many national and international experts and against the explicit advice of Hungary's international partners. The fact that this fourth amendment knowingly contains a number of provisions that had previously been declared unconstitutional by the Constitutional Court of Hungary and/or flagged as being at variance with European principles and norms by the Venice Commission, is unacceptable and raises questions about the willingness of the current authorities to abide by European standards and norms.

10. The Assembly takes note of the opinion of the Venice Commission on the fourth constitutional amendment, the conclusions and findings of which confirm the concerns of the Assembly expressed in this resolution and in the report of the Monitoring Committee. It urges the Hungarian authorities, in close co-operation with the Venice Commission, to fully address the concerns and implement the recommendations contained in the opinion.

11. The assessments of the constitution and several cardinal laws by the Venice Commission and Council of Europe experts raise a number of questions with regard to the compatibility of certain provisions with European norms and standards, including with the case law of the European Court of Human Rights. The Assembly calls on the Hungarian authorities to continue the open and constructive dialogue with the Venice Commission and all other European institutions.

12. In addition, the Assembly calls upon the Hungarian authorities, with regard to:

12.1. the Act on Freedom of Religion and the Status of Churches, to:

12.1.1. remove the right to decide to recognise a religious denomination as a church from the competencies of the parliament, which is inherently a political body, and to ensure that such decisions are made by an impartial administrative authority on the basis of clear legal criteria;

12.1.2. establish clear legal criteria for the recognition of a church that are fully in line with international norms, including the case law of the European Court of Human Rights;

12.1.3. provide for the possibility to appeal against any decision to grant, or reject, a request to be recognised as a church, before a normal court of law, both on substantial as well as on procedural grounds;

12.2. the Act on Elections of Members of the Parliament, to:

12.2.1. ensure that the election districts are drawn up by an independent authority on the basis of clear legal criteria;

12.2.2. ensure that the district boundaries themselves are not defined by law, especially not by a cardinal law. In addition, the Assembly recommends that the authorities seek a wide consensus between all political parties on the so-called compensation formula and to allow minority voters up until election day the choice of voting for a regular party or a minority list. The Assembly notes that with the adoption of the Act on Elections of Members of the Parliament, the authorities responded to the recommendation of the Venice Commission and the decision of the Constitutional Court regarding the disproportionality of the election districts;

12.3. the Act on the Constitutional Court, to:

12.3.1. remove the limitation of the jurisdiction of the Constitutional Court on economic matters;

12.3.2. remove from the constitution the prohibition of the Constitutional Court to refer back to its case law from before 1 January 2012;

12.3.3. introduce a mandatory “cooling-down” period in respect of members of parliament, which already exists for members of the government, leading officials of a political party or State leaders, between the end of their political mandates and before the start of their new function, before they can be elected as judge of the Constitutional Court;

12.4. the Acts on the Judiciary, notwithstanding the improvements made to the relevant laws in co-operation with the Secretary General of the Council of Europe, to:

12.4.1. remove from the powers of the Chairperson of the National Judicial Office the possibility to transfer cases;

12.4.2. remove the possibility in the law for the Chairperson of the National Judicial Office to annul the outcome of a competition for the appointment of a judge;

12.4.3. to ensure that, by law, all decisions of the Chairperson of the National Judicial Office can be appealed before a court of law, both on substantial and on procedural grounds;

12.5. media legislation, to:

12.5.1. abolish registration requirements for print and online media;

12.5.2. separate, functionally and legally, the Media Council from the Media Authority;

12.5.3. ensure that, by law, all decisions of the Media Council or Media Authority can be appealed before a court of law, both on substantial and on procedural grounds.

13. The Assembly considers that each of the concerns outlined above is inherently serious in terms of democracy, the rule of law and respect for human rights. Taken separately, they would already warrant close scrutiny by the Assembly. In the present case, however, what is striking is the sheer accumulation of reforms that aim to establish political control of most key institutions while in parallel weakening the system of checks and balances.

14. When acceding to the Council of Europe, Hungary voluntarily committed itself to upholding the highest possible standards in relation to the functioning of democratic institutions, the protection of human rights and respect for the rule of law. Regrettably, the above-mentioned developments have raised serious and sustained concerns about the extent to which the country is still complying with these obligations. The Assembly, however, decides not to open a monitoring procedure in respect of Hungary but resolves to closely follow the situation in Hungary and to take stock of the progress achieved in the implementation of this resolution.